

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Amendment of the Commission's Rules)

To Permit Flexible Service Offerings)

in the Commercial Mobile Radio Services)

WT Docket No. 95-166

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COMMENTS OF AT&T CORP.

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TABLE OF CONTENTS

Introduction and Summary	1
I. The Commission Should Clarify That CMRS Providers May Use Their Spectrum for Either Fixed or Mobile Services .	2
A. Flexibility in Spectrum Use Will Serve the Public Interest by Enhancing Wireless Competition	2
B. Division of Broadband CMRS Spectrum Between Mobile and Fixed Applications Should be Based on Market Forces	4
II. The Commission Should Not Differentiate Between Broadband Wireless Technologies	6
III. The Commission Should Not Limit the Types of Fixed Services That CMRS Licensees May Provide	7
IV. Fixed Services Provided by Wireless Carriers Should Remain Classified as CMRS	9
Conclusion	11

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In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") submits these comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

INTRODUCTION AND SUMMARY

AT&T strongly supports the Commission's proposal to clarify that commercial mobile radio service ("CMRS") providers may offer fixed services on their wireless spectrum. By confirming that wireless providers should make the most efficient use of their facilities, this action will enhance the options available to customers and potentially allow competition in the local exchange marketplace. The Commission should make clear that this fixed service option applies to all CMRS licensees and refrain from imposing restrictions on the types of fixed services that may be provided. Finally, at least until and unless wireless networks incorporating fixed services have the opportunity to develop and actually become a substitute for wireline local loop service, the

^{1/} Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 96-6 (released Jan. 25, 1996) ("Notice").

Commission should continue to regulate all services provided by CMRS licensees over wireless spectrum as CMRS.

I. The Commission Should Clarify That CMRS Providers May Use Their Spectrum for Either Fixed or Mobile Services

A. Flexibility in Spectrum Use Will Serve the Public Interest by Enhancing Wireless Competition

The Commission commenced this proceeding to address the potential uncertainty in its rules regarding the extent to which fixed services may be provided by certain CMRS licensees.^{2/} Recognizing that this ambiguity could hinder wireless providers "from quickly and economically using channel capacity to meet changing market demand,"^{3/} the Commission proposes to amend its existing rules to clarify that broadband PCS, cellular, and SMR licensees may, on a primary basis, provide fixed local loop services on spectrum allocated to these services.

AT&T fully agrees that the clarifications proposed by the Commission will result in increased competition among wireless services and ultimately promote competition between wireless and wireline services. Action in this regard is entirely consistent with longstanding congressional and agency goals of fostering the

^{2/} Id. at ¶ 1.

^{3/} Id. at ¶ 13.

competitive provision of telecommunications services generally^{4/} and wireless services in particular.^{5/}

For its part, the Commission has long sought to eliminate barriers to wireless competition in the telecommunications marketplace. Earlier this year, for example, the agency commenced a rulemaking proceeding on LEC-to-CMRS interconnection, noting that changes in compensation arrangements are necessary if CMRS services "are to begin to compete directly against LEC wireline services."^{6/} Previously, in establishing rules for broadband PCS, the Commission acknowledged that PCS services might include advanced wireless replacements for ordinary telephones.^{7/} Confirmation that wireless providers have the flexibility to use the allocated spectrum for fixed services will advance the longstanding goal of introducing competition into all

^{4/} See Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) ("1996 Act"); H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996) ("Conference Report") (objective of legislation is to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

^{5/} See 47 U.S.C. § 332(a)(3) (important goal of comprehensive federal regulatory scheme to govern wireless services is to "encourage competition and provide services to the largest feasible number of users").

^{6/} Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185, CC Docket No. 94-54 at ¶ 12 (released Jan. 11, 1996).

^{7/} Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7712 (1993).

aspects of the telecommunications marketplace. It will make wireless services significantly more useful to customers and may potentially open the door to full-fledged wireless local loop competition.

B. Division of Broadband CMRS Spectrum Between Mobile and Fixed Applications Should be Based on Market Forces

The Commission seeks comment on whether currently allocated PCS, cellular, and SMR spectrum will provide sufficient capacity for mobile uses if fixed wireless local loop services also are provided. AT&T believes that if the operation of the market is allowed to determine the most efficient division of this spectrum, the needs of both mobile and fixed services customers will be satisfied.

As a threshold matter, it is likely that, having invested billions of dollars in mobile facilities, most existing cellular providers will retain the primarily mobile character of their offerings. In addition, the business plans of the recently-licensed PCS operators are probably focused on the provision of a cellular-like mobile service for the foreseeable future.^{8/}

The Commission should not arbitrarily impose restrictions on CMRS licensees out of concern that there may be insufficient spectrum for mobile uses. With demand for mobile services

^{8/} See e.g., Anttila, PCS: New Competition and New Opportunities, Telecom Perspective, September 1995 ("Initially, most PCS licensees will focus on head-to-head competition with existing cellular operators, competing primarily on price.").

increasing over the next decade,^{9/} a CMRS licensee will have every incentive to tailor its offerings to meet such demand. Far from displacing mobile services, the flexibility to offer fixed services will enable licensees to meet evolving customer needs in the marketplace.^{10/}

Under a regime where the government is relying on market forces -- namely, auctions -- to distribute CMRS licenses, it makes sense to rely on the same market forces, to the extent possible, to determine how providers may make use of their authorizations. One theory behind awarding licenses through the competitive bidding process is that those who place the highest value on the licenses "will provide service and use the spectrum most efficiently."^{11/} By granting CMRS licensees wide latitude

^{9/} See Notice at ¶ 24, citing U.S. National Spectrum Requirements, Projections and Trends, U.S. Department of Commerce, National Telecommunications and Information Administration, March 1995 (NTIA Special Publication 94-31); Land Mobile Spectrum Planning Options, U.S. Department of Commerce, National Telecommunications and Information Administration, October 1995 (NTIA Special Publication 95-34) (concluding that demand for spectrum for mobile services will increase substantially over the next decade, with a corresponding decrease in demand for fixed use).

^{10/} In any event, there is, and will be, more than sufficient spectrum to meet demand for mobile uses. Nationwide, the penetration level of cellular service, which uses mostly analog technology, is approximately 11.5 percent, with adequate excess capacity for additional subscribers. See "Wireless Customers Near 30 Million Mark; Monthly Bills Drop Again," Cellular Telecommunications Industry Association Mid-Year Data Survey (Sept. 21, 1995). As a digital service, one PCS network could offer at least twice the capacity of all the currently-licensed traditional cellular networks.

^{11/} Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2349 (1994).

to determine the use of the licenses they have purchased at auction, the Commission will help ensure that the goals of the competitive bidding process are met and that the licenses are valued properly in the auction process. Further, by allowing market forces to determine the mix between mobile and fixed services, the Commission will encourage the integration of these services in the most efficient and consumer responsive manner.

II. The Commission Should Not Differentiate Between Broadband Wireless Technologies

The Commission proposes changes to the broadband PCS rules to expand the service offerings permissible on the spectrum and tentatively concludes that similar treatment be afforded other categories of CMRS that have the potential to compete with PCS. AT&T agrees.

Given that one of Congress's major objectives in enacting Section 332 was to achieve regulatory parity among commercial mobile services, it would be inappropriate to distinguish between PCS, cellular, and SMR. Artificially constraining the use of cellular and SMR frequencies would, for no apparent reason, competitively disadvantage these services vis a vis PCS. Because all of these categories ultimately will be classified simply as "broadband CMRS", preserving old distinctions is both unnecessary and counterproductive.

In addition, the Commission has previously found that narrowband CMRS is "substantially similar" to these broadband services and that "to the extent practical, technical and operational rules should be comparable for virtually all existing

and reclassified CMRS services."^{12/} Accordingly, narrowband licensees should also be afforded operational flexibility to offer fixed services.

III. The Commission Should Not Limit the Types of Fixed Services That CMRS Licensees May Provide

The Commission seeks comment on whether the fixed services permitted on CMRS spectrum should be limited to "wireless local loop" or whether CMRS licensees should be allowed to provide any form of fixed service without restriction. AT&T submits that allowing licensees the freedom to choose which fixed services to provide will maximize customer choice and enhance telecommunications competition.

Imposing restrictions on the fixed use of spectrum would make it difficult for wireless providers to meet customer demand. While it is impossible and undesirable at this time to attempt to forecast exactly what services may be requested or feasible, it is clear that artificial regulatory restrictions could only result in diminished service and dissatisfied customers. Consequently, one of the objectives of this Notice -- to promote competition between wireless and wireline services -- would be undermined. It is unlikely that subscribers would ever view CMRS as anything more than an adjunct to landline service if they are

^{12/} Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 7996 (1994) (concluding that "all reclassified private mobile radio services actually compete, or have the potential to compete within a reasonable time period, with existing commercial mobile radio services").

unable to receive the same services over wireless facilities that they can get from their landline provider.

There is thus no reason for the Commission to mire itself in defining the term "wireless local loop" or in expending the considerable resources that would be needed to police compliance with such a restriction. As noted above, fears of a potential spectrum deficiency for mobile services are unfounded. CMRS providers have a powerful incentive to meet demand, whether it be through fixed or mobile applications. If demand for mobile services increases, the flexibility proposed in this Notice will allow licensees to adapt their use of channel capacity quickly to meet the changing needs. Permitting the provision of all technically compatible fixed services on CMRS spectrum is the best and most efficient way to serve the public interest.

If the Commission nevertheless chooses to limit permissible fixed services to "wireless local loop", that term should be defined as broadly as possible. For example, as the Commission suggests, potential uses, such as wireless Internet access, electronic funds transfers, point-of-purchase credit card verification, and remote monitoring, should be subsumed within the definition.^{13/} In addition, the Commission should clarify that its proposed definition of "wireless local loop" as the "path between the subscriber and the first point of switching or

^{13/} See Notice at ¶ 22.

aggregation of traffic" does not apply to the shared use of radio facilities designed simply to increase spectrum efficiency.^{14/}

IV. Fixed Services Provided by Wireless Carriers Should Remain Classified as CMRS

Even with the clarification that wireless systems may provide fixed services, there is no way to predict how wireless networks will develop. Given this uncertainty over network design and potential service applications, it would be premature for the Commission to depart from the CMRS regulatory classification.^{15/} The Commission correctly recognizes that subjecting carriers to multiple layers of regulation, based on the make-up of their service offerings at any given point in time, would inhibit licensees from developing the services desired by customers and would create confusion among

^{14/} Id. at ¶ 6. For instance, a CMRS provider might choose to "aggregate" traffic from a multiple dwelling unit or an office building at a curbside site before sending it to its mobile telephone switching office. The Commission should make clear that it does not intend to limit the reach of the "wireless local loop" to this (or any similar) technical aggregation point.

^{15/} With respect to PCS in particular, Congress has made clear that such services, whether they be fixed or mobile in nature, are to be defined as CMRS and regulated under Section 332. See 47 U.S.C. § 153(n)(3) ("Mobile service" means "any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90-314; ET Docket No. 92-100) or any successor proceeding."). Because of the federal mandate to promote regulatory parity, 47 U.S.C. § 332, the Commission must treat other CMRS in a similar fashion. To do otherwise might give PCS a competitive advantage and harm the development of other wireless services.

subscribers, federal and state regulatory bodies and licensees.^{16/} The prospect of complying with a new regulatory scheme would also discourage providers from quickly altering the nature of their services to meet demand. If and when CMRS services actually become a substitute for wireline local loop service,^{17/} the Commission can revisit the issue of regulatory classification, and can take appropriate steps to ensure, for example, that customers' right to select interexchange carriers is preserved.^{18/}

^{16/} If the Commission nevertheless determines that, to retain the CMRS classification, there must be some mobile component to a provider's offerings, it should explicitly rule that such mobile service may be provided on any of the licensee's CMRS spectrum without regard to whether it is in the same market or in the same service as the fixed application. To do otherwise could prevent CMRS providers from providing the services desired by their customers.

^{17/} Congress has recognized that, at the point at which the service "substantially replaces" another, a re-evaluation of its regulatory status may be appropriate. Cf. 47 U.S.C. § 332(c)(3)(A)(ii) (States are preempted from regulating CMRS rates unless wireless "services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State."); 47 U.S.C. § 251(h)(2)(B) (carriers shall not be treated as incumbent LECs unless "such carrier has substantially replaced an incumbent local exchange carrier"). In this regard, it is noteworthy that, under the 1996 Act, CMRS is not classified as a LEC service unless the Commission determines that "future circumstances warrant" including CMRS providers that provide telephone exchange service or exchange access pursuant to the definition of a "local exchange carrier." 47 U.S.C. § 153(44), added by 1996 Act, § 3(a); see also Conference Report at 116.

^{18/} The Commission retains the authority to require providers of CMRS, whether mobile or fixed, to afford their subscribers access to the interexchange carriers of the subscribers' choice. 47 U.S.C. § 332(c)(8), added by 1996 Act, § 705.

Conclusion

For the foregoing reasons, the Commission should clarify that all CMRS providers may offer fixed services without restriction on their wireless spectrum, and that such fixed services will remain, for the present, classified as CMRS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 1st day of March, 1996, I caused a copy of the foregoing Comments of AT&T Corp. to be sent by first class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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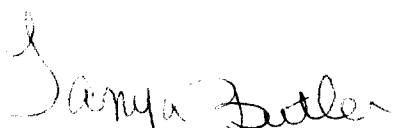
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